

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 06-10162-JTM

STACY L. FISHER,
Defendant.

MEMORANDUM AND ORDER

The Court previously denied petitioner-defendant Stacy Fisher's Motion to Vacate his sentence pursuant to 28 U.S.C. § 2255, holding that Fisher's motion was filed outside the applicable one-year statute of limitations. The matter is now before the court on Fisher's Motion for Reconsideration.

The Court has examined Fisher's sentencing history and finds that the prior conviction in Sedgwick County District Court Case No. 92CR1648 for the crime of Aggravated Escape from Custody was apparently premised on K.S.A. 21-3810(a), which arises when the escapee flees a felony charge, rather than 21-3810(b), an escape which occurs "by the use of violence or the threat of violence." K.S.A. 21-3809(b)(2) defines an "escape" to include a "failure to return to custody following temporary leave." Accordingly, there is substantial cause to believe that the Motion to Vacate was timely filed in the wake of the new rule of law expressed in *Chambers v. United States*,

__ U.S. ___, 129 S.Ct. 687 (2009), which held that a “failure to report” escape is not a crime of violence for purposes of the Armed Career Criminal Act. The Tenth Circuit has stated that the Supreme Court’s analysis of the ACCA “applies equally to the sentencing guidelines.” *United States v. Tiger*, 538 F.3d 1297, 1298 (10th Cir.2008).

Accordingly, the Motion to Reconsider is granted. The government shall respond to the Motion to Vacate within thirty days of the date of this Order.

IT IS SO ORDERED this 26th day of June, 2009, that the defendant’s Motion to Reconsider and for Leave to Proceed In Forma Pauperis (Dkt. No. 35) is hereby granted.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE